SUPREME COURT OF THE

OCTOBER TERM,

No. [illegible]

ST. LOUIS H.S. AND GRAIN COMPANY, APPELLANT,

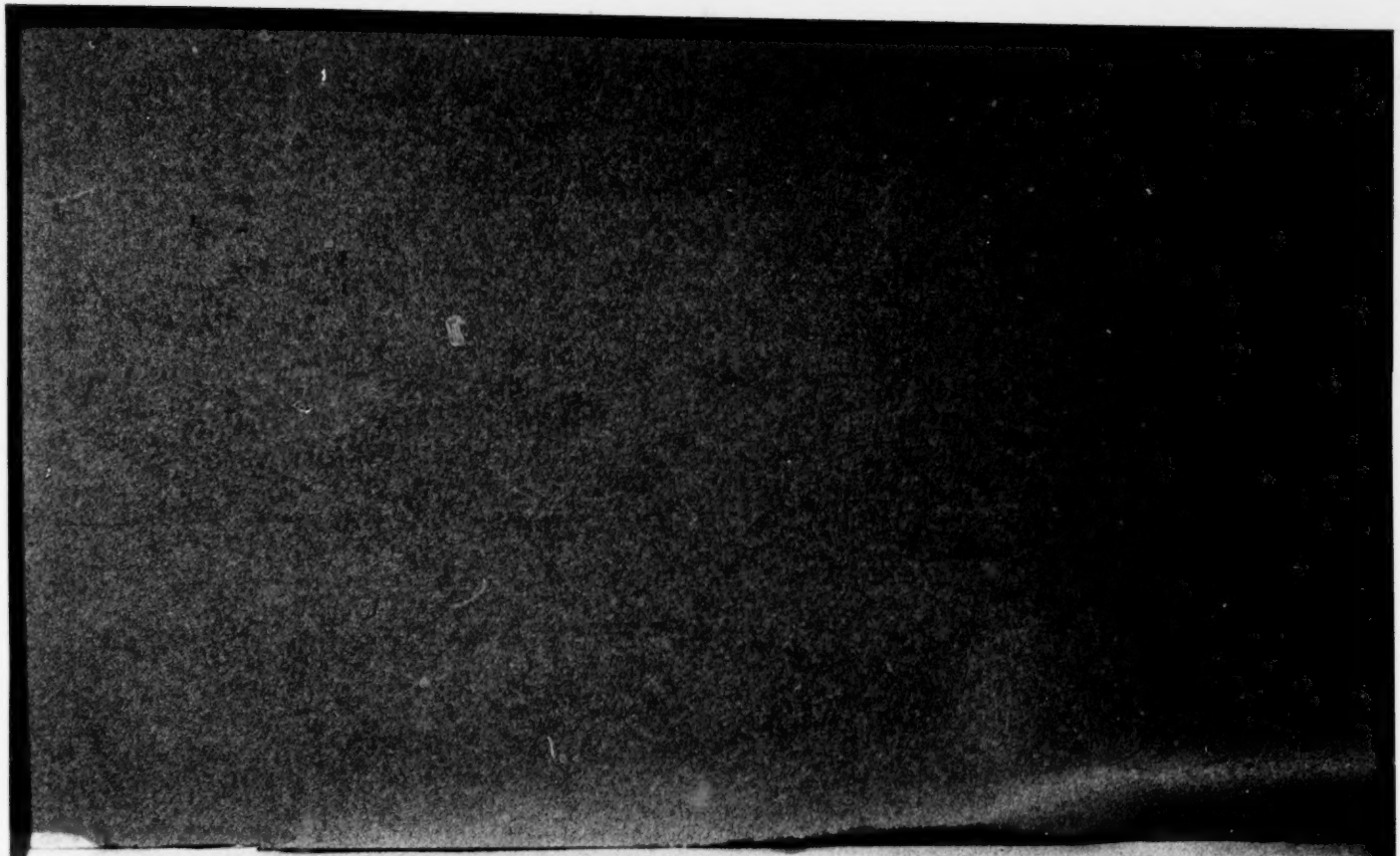
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL [illegible], 1898.

(18,497.)



(18,497.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 644.

ST. LOUIS HAY AND GRAIN COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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Judd & Detweiler, Printers, Washington, D. C., April 15, 1902.

1 Court of Claims.

ST. LOUIS HAY AND GRAIN COMPANY (a Corporation)
vs.
THE UNITED STATES. } No. 22453.

I.—*Petition.*

(Filed January 18, 1901.)

To the honorable the Court of Claims:

The claimant, St. Louis Hay & Grain Co., respectfully represents:

I. That it is a corporation duly organized and doing business under the laws of the State of Illinois, having its principal office of business at 315 Merchants' exchange, in the city of St. Louis, State of Missouri.

II. That on June 25, 1898, Col. J. G. C. Lee, deputy quartermaster general, U. S. A., issued an advertisement calling for proposals, in part as follows:

"*Proposals for Forage and Straw.*

CAMP GEORGE H. THOMAS, GA., *June* 25, 1898.

Sealed proposals in duplicate, will be received here until eleven o'clock a. m., July 11, 1898, for supply of 7,000,000 pounds oats, 5,000,000 pounds bran, 9,000,000 pounds baled hay and 1,000,000 pounds baled straw, to be delivered, as required, f. o. b. cars
2 at Battlefield station, Ga. Particulars and blank forms of proposals can be obtained of

J. G. C. LEE,
Chief Quartermaster.

"The following information is furnished in connection with the foregoing advertisement:

* * * * * * *

"5. Deliveries of the supplies to begin within five days from the date of award, and proceed at daily rates of at least one-sixtieth of amounts, or in such quantities as may be designated by the chief quartermaster, or his authorized representative, free on board cars at Battlefield R. R. station, Ga."

That claimant on the 11th day of July, 1898, submitted proposals in due form to furnish 9,000,000 pounds of hay in accordance with the provisions of said advertisement, at the rate of sixty-one and one-half cents per hundredweight; that when the proposals for hay were opened, Col. J. G. C. Lee verbally notified claimant and other bidders that at least eight or ten cars per day would be required, as there were about fourteen thousand head of stock on hand; should the shipments fall off the Government would purchase in the open market and charge the amount to the account of the contractor; that the contractor must be prepared to fill the con-

tract in ninety days. The proposal submitted by claimant was accepted by the defendant through its agent, Col. J. G. C. Lee, chief quartermaster, in a written acceptance dated the 12th day of July, 1898, whereby a contract was created between the parties.

III. Claimant thereupon immediately proceeded to fulfill and carry out its obligation under said contract, and on July 21, 1898, made its first shipment of hay and continued shipments, as follows:

3

July 21 to 31	45 cars.....	1,002,316 pounds
During August	152 cars.....	3,383,633 pounds
During September	37 cars.....	911,710 pounds
During October	17 cars.....	402,225 pounds
During November	13 cars.....	333,802 pounds
During December	No cars.....	
During January	3 cars.....	67,800 pounds
During February	28 cars.....	670,505 pounds
During March	17 cars.....	407,608 pounds
During April	15 cars.....	359,980 pounds
During May	29 cars.....	700,290 pounds
During June	(Estimated).....	504,840 pounds
		8,744,709 pounds

IV. That on August 28, 1898, claimant received a telegraph order from Captain D. E. McCarthy, depot quartermaster at Camp Thomas, as follows: "Do not ship any more hay until notified to do so." Whereupon, shipments were suspended and were never resumed at daily rates of one-sixtieth of the amount in accordance with the contract. But from time to time between August 28, 1898 and June 30, 1899, claimant was required, under penalty of having hay purchased in open market and charged to its account, to furnish hay on telegraphic or other orders from the quartermaster, and it furnished hay, as stated in the preceding paragraph. At the time the shipments under the contract were stopped August 28, 1898, claimant had in transit and in railroad yards about one hundred car-loads of hay intended for delivery under the contract during the first half of September. In consequence of the refusal of the Government to take this hay and of the great expense which it would have entailed upon claimant to have stored it, waiting for the Government to permit shipment, it was required to dispose of the hay in the general market to its disadvantage and to its

4 loss. That thereafter claimant had to buy in the open market, as best it might, hay as required by the military authorities and that hay so purchased cost the claimant on an average of $2.50 per ton more than it would have cost it had it been permitted to complete its contract in accordance with the terms of the contract. That owing to the increased freight charges it cost claimant on an average $1.00 per ton more to deliver the hay than it would have cost it had the deliveries been made as contemplated by the con-

tract at the time claimant had special arrangements with the railroad companies for transportation.

Had the claimant been permitted to fill its contract during the months of July, August and September, as it would have done had the contract for the delivery of at least one-sixtieth of the amount daily been carried out, it could have delivered hay at Battlefield railroad station a- $11.80 per ton, cost price. The average cost after the stoppage on August 28, 1898, was $15.30 per ton, for which it has been paid at the rate of sixty-one and one-half cents per hundredweight, or $12.30 per ton.

V. That by reason of the refusal of the defendant to accept one-sixtieth of the amount contracted for daily, the contract was broken and the claimant has been damaged, as follows:

Increased cost price of 2174 tons at $2.5.0	$5,435 00
Increased cost of transportation of 2174 tons at $1	2,174 00
Anticipated profits on 2174 tons at 50 cents	1,087 00
	$8,696 00

That the total amount contracted for was 9,000,000 pounds of hay, of which the Government accepted and paid for 8,744,709 pounds, leaving a balance of 255,291 pounds contracted for but not accepted by the defendant, on which the claimant claims as its anticipated profits of 50 cents on each ton, $63.80.

Wherefore claimant claims damages on the 2,174 tons delivered in the sum of $8,696, and on 255,291 pounds not delivered, $63.80, a total of $8,759.80, or for the market value of 2,174 tons of hay, delivered to the defendant for its use, less the amount paid by defendant, and accepted under protest.

VI. That a claim was presented to the auditor for the War Department and was by him disallowed on the 15th day of January, 1900, on the ground that the claim was one for unliquidated damages, which the accounting officers have no authority to allow. The Comptroller of the Treasury affirmed this decision on the grounds stated.

No other action than as aforesaid has been had on this claim in Congress or by any of the departments.

The claimant is the sole owner of this claim and the only person interested therein; and no assignment or transfer of this claim, or of any part thereof or interest therein, has been made.

The claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets. The claimant is a citizen of the United States, and has at all times borne true allegiance to the Government thereof, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government; and the claimant believes the facts as stated in this petition to be true. And the claimant prays judgment in the sum of eight thousand, seven hundred and fifty-nine and $\frac{80}{100}$ dollars ($8,759.80).

GEORGE A. & WM. B. KING,
Attorneys for Claimants.

WM. E. HARVEY, *Of Counsel.*

Frederick Deibel being duly sworn, deposes and says: I am the president and treasurer of the claimant company in this case. I have read the above petition, and the matters therein stated are true, to the best of my knowledge, information and belief.

FREDERICK DEIBEL.

Subscribed and sworn to before me this 12th day of January, 1901.

[SEAL.]

H. W. KROEGER,
Notary Public.

6 II.—*Traverse. Filed November* 5, 1901.

ST. LOUIS HAY AND GRAIN COMPANY
vs.
UNITED STATES. } No. 22453.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney General.
W.

7 III.—*Amended Findings of Fact and Conclusions of Law. Filed February* 17, 1902.

ST. LOUIS HAY & GRAIN COMPANY
vs.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following findings of fact:

I.

The following advertisement was published on the day of its date:

Proposals for Forage and Straw.

CAMP GEO. H. THOMAS, GA., *June* 25, 1898.

Sealed proposals in duplicate will be received here until 11 o'clock a. m., July 11, 1898, for supplying 7,000,000 pounds of oats, 500,000 pounds bran, 9,000,000 pounds baled hay, and 1,000,000 pounds baled straw, to be delivered as required f. o. b. cars at Battlefield station, Ga. Particulars and blank forms of proposal can be obtained of

J. G. C. LEE,
Chief Quartermaster.

The following information was furnished in connection with the foregoing advertisement:

8 1. The estimate quantity of forage and straw required are as follows:

9,000,000 pounds of hay.

2. The foregoing are the estimated quantities which will be required, but bids will be accepted in whole or in part and awards made accordingly, and awards made under accepted bids will provide that the quantities awarded may be increased or decreased at the option of the United States, not exceeding 20 per centum thereof, should the interest of the public service demand such change; that in case of change of the quantities required by increase or decrease, notice of such change will be served on the bidder by the chief quartermaster; and, further, that if the troops shall be wholly or in part withdrawn, the awards shall become inoperative to the extent of such reduction.

Hay and straw.

3. To be of the best merchantable quality of the highest recognized commercial grade of the locality, free from dust and other foreign matter, and to be put up in bales, each securely bound with three wires, and containing not to exceed 250 pounds net. Rate per 100 pounds net to be stated.

4. Deliveries of the supplies to begin within five days from date of award, and proceed at daily rates of at least one-sixtieth of amounts, or in such quantities and at such times afterwards, as may be designated by the chief quartermaster or his authorized representative, free on board cars at Battlefield, R. R. station, Ga.

5. Proposals are required in duplicate.

6. Porposals for any class of the supplies mentioned or for quantities less than the whole required will be entertained, but the Government reserves the right to reject or accept the whole or any part of a bid, and to make award for either kind of supplies or such proportion thereof as may be considered for the best interest of the service.

9 7. The supplies will be subject to the inspection and acceptance or rejection of such inspector or inspectors as may be selected by the Government.

8. The successful bidders shall be responsible for and pay all liabilities for labor and material in the fulfillment of any awards made to them.

9. In case of failure of the bidder to furnish and deliver the supplies awarded to him, the said bidder shall be charged with all expenses resulting from such failure.

10. Bidders are invited to be present at the opening of the proposals.

Envelopes containing proposals should be marked "Proposals for forage and straw," and addressed to the undersigned, at Lytle, P. O., Ga.

J. G. C. LEE,
Assistant Quartermaster General,
U. S. Army, Chief Quartermaster.

In response to this advertisement a number of bidders submitted proposals. That of the St. Louis Hay and Grain Company, the claimant in this case, a corporation having its principal office in the city of St. Louis, Missouri, was as follows:

"Col. J. G. C. Lee, chief quartermaster.

SIR: In accordance with the above advertisement, inviting proposals for military supplies, and subject to all the conditions thereof, we propose to furnish and deliver at Battlefield Sta., Ga., the articles below specified, at the prices set opposite each article.

ST. LOUIS HAY & GRAIN CO.,
Per FRED DEIBEL, *Pres't.*

Nine million pounds of hay (9,000,000) (61½) sixty-one & ½ pr. 100 lbs."

The proposals were opened, as stated in the advertisement, at the office of the depot quartermaster, Chickamauga Park, Geor-
10 gia, in the presence of Col. J. G. C. Lee and a large number of bidders.

Col. Lee stated on that occasion that the party that received this contract would have to be prepared to have the goods ready and ship immediately, as they had a very large number of animals, and that the required amount as stated in the proposal would be used up each day, and that the hay must be of the quality stated in the proposal.

The bid of the claimant, so far as it related to hay, was accepted as follows:

Headquarters first army corps and Camp Geo. H. Thomas, chief quartermaster's office.

CHICKAMAUGA PARK, GA., *July* 12, 1898.

The St. Louis Hay and Grain Co., Saint Louis, Mo.

GENTLEMEN: Your proposal opened July 11, 1898, for supplying 9,000,000 pounds of baled hay at Battlefield, Ga., at 61½ cents per 100 pounds, is accepted.

Deliveries are to be made as prescribed in my circular to bidders of June 25th last, on which your proposal was based, and the hay must be of the quality stated in said circular, copy of which is inclosed herewith for your information and guidance.

The hay will be called for, inspected, received, and paid for by the depot quartermaster, Battlefield, Ga., at present Captain D. E. McCarthy, assistant quartermaster, U. S. Army, and all consignments should be made to him.

Very respectfully,

J. G. C. LEE,
Col. and Ass't Quartermaster Gen'l,
U. S. A., Chief Quartermaster.

Upon ascertaining that the claimant was the successful bidder Col. Lee stated to the president of the company that Capt. D. E.

McCarthy, depot quartermaster, would do the ordering, and
11 referred him (the president of the company) to said Captain McCarthy for directions as to the exact amount that would be wanted daily.

Thereupon the president of the company called on said Captain McCarthy, who gave him verbal orders to have not less than 8 nor more than 10 cars on the track daily.

The minimum car-load of hay was of 20,000 pounds weight, and thus eight car-loads would have amounted to 160,000 pounds.

There were about 12,000 animals at Chickamauga Park at the time.

III.

Immediately upon the acceptance of the claimant's proposal its officers arranged by telegraph with their correspondents that the hay would be shipped from points in the immediate vicinity of its production, mostly in the States of Indiana and Illinois, direct to Chickamauga Park.

By shipping in this manner the claimant could purchase more economically than in the St. Louis market, and was also enabled to obviate much of the expense incident to handling and switching the cars which would be incurred at St. Louis, and to save in transportation, which cost less from these points than from St. Louis.

Shipments were made in this way by the 27th of August, 1898, hay had been delivered by the claimant and accepted by the United States, as follows:

	Pounds.
Prior to July 25, 1898, various shipments made on an earlier contract for two millions (2,000,000) pounds, and supplied by the quartermaster on the transactions involved in the present claim.....	421,921
Between July 25, and July 30, twenty-six (26) cars, containing.....	580,395
Between August 1 and August 27, one hundred and seventy-two (172) cars, containing.....	3,683,633
Being a total to that date of..... ..	4,685,949

12 or more than half the amount provided in the advertisement, proposal and acceptance.

The following telegram was sent by the depot quartermaster and received by the claimant on the day of its date:

"CHICKAMAUGA NAT'L PARK, GA., *Aug. 28th.*

St. Louis Hay and Grain Co., No. 315 Merchants' exchange, St. Louis, Mo.:

Do not ship any more hay until notified to do so.

McCARTHY,
Quartermaster."

On the date of this telegram the claimant had 100 or more cars in transit to Chickamauga Park, which it was obliged to dispose of in

different markets throughout the country for what price it could get.

(J. R.) This hay had cost the claimant various prices, from $6 to $7.50 a ton, being from 30 cents to 37½ cents a hundredweight. The cost of the shipment of the same from the points of its production would not have exceeded 25 cents a hundredweight.

The claimant was ready and willing to proceed with shipments at a rate practically identical with that at which it had been delivering, in which event it would have completed the delivery of the entire 9,000,000 pounds by the close of September, 1898, and at the price named in its proposal would have sustained no loss.

Upon the receipt of the telegram of August 28, 1898, the claimant, by one of its officers, both verbally and in writing, protested against the stoppage of shipments. The quartermaster, however, would not at that time accept any more hay.

IV.

On the 12th of September, 1898, and at various dates thereafter to May 18, 1899, the depot quartermaster at Chickamauga Park sent telegrams to the claimant at St. Louis, as follows:

13 September 12. Send twelve car-loads of hay at once.

September 19. Please send at once ten car-loads of hay.

September 23. Ship at once fifteen car-loads of hay.

October 5. Ship at once twenty car-loads hay.

November 10. Please ship at once ten car-loads of hay.

January 20. Please ship at once three cars of hay.

February 3. Ship at once thirty car-loads hay. Answer.

March 21. Send more hay; use more than car-load per day; keep us supplied.

March 23. Only four days' hay on hand. Unless you supply me will purchase in open market at your expense. This is the third and last call. Follow cars with wire so there will be no delay.

May 18. Hay supply short, rush forward eight cars.

The replies of claimant, so far as exhibited to the court by either party were as follows:

December 2, 1898.

If you are in a position to send us an order for some more hay on our contract, we will be glad to hear from you by wire, as we are in very good position to forward same promptly.

December 10, 1898.

If you can favor us with an order next week for 15 or 20 cars of hay on our contract, we will appreciate the same, as we are in position to move it promptly.

December 14, 1898.

If there is any indication of your wanting a number of cars on our contract, we would like to hear from you by wire, as we have quite a number of cars on the track that we will have to place in other

markets if we do not hear from you, and possibly might be delayed in getting cars when your order would come in, so hope you can advise us.

14 December 29, 1898.

If it is possible for you to advise us about how much more hay you will expect to use during the coming week or month on our contract with you we would like to know, as from the present conditions of market it looks like there is going to be considerable of an advance, and we *not* not know how much more hay you will want; and we cannot afford to take any chances on high prices for the next thirty or sixty days, unless we are protected by getting the hay for the order now, and we do not know how much you will need or want.

January 31, 1899.

We would appreciate very much if you can arrange to send us up a voucher covering all the cars sent you up to date, namely, (enumerating nine cars), and if you will soon be in need of a few more cars of hay would like to know a few days ahead of time, because the receipts of hay are very light on the markets now.

February 3, 1899.

Wire received for 30 cars hay. Will give prompt attention.

March 23, 1899.

Need not worry. Hay on way. Will rush. Tracers following.

April 13, 1899.

Replying to your favor of the 11th instant, advising us that you have rejected Sou. car 9803, and L. & N. 11048 hay on account of not being up to grade called for in our contract, you will kindly instruct your representative to have these cars delivered to J. P. McCall & Company on their order, which they will present to you, as we have instructed them to make disposition of the cars, so that they will be out of your way.

April 13, 1899.

Your favor of the 11th instant to hand, asking us to reduce our shipments of hay to your depot one-third after April 13, which is satisfactory, and we will be governed accordingly.

15 April 27, 1899.

We beg to return to you today, under separate cover, voucher duly signed according to your request, covering hay on our contract, amounting to $1,842.76, trusting you will forward us a check promptly by return mail.

May 1, 1899.

Your favor of the 28th instant to hand, advising that we are short on delivery of hay, which we will look into and have ample sent

you at once. * * * We inclose you invoice covering hay forwarded you today on our contract which we trust will be satisfactory. We assure you you need not go on the open market to purchase any needs, as we will have hay with you all the time.

May 19, 1899.

Your wire received and contents duly noted, advising that supply of hay is running short and asking us to rush forward 8 car-loads of hay. We will have the 8 car-loads loaded just as fast as we possibly can. We now inclose original bill of lading and invoice on 2 cars hay forwarded today, and will instruct railroad company to trace and rush through so there will be no delay in delivery. You can depend upon it that we will keep you supplied with hay. We have not received our check covering the last voucher that we signed and sent down to you last week, and we will appreciate very much if you will return by next mail.

May 27, 1899.

Inclosed we hand you original bill of lading on Baltimore and Ohio cars and invoice ordered upon our contract today, which we trust will arrive promptly. We will have more cars loaded next week and forward to you.

June 15, 1899.

Your favor of the 13th instant at hand and contents duly noted, advising us that on account of temporary reduction of stock at your depot you wish us to stop shipments of hay until you tell us otherwise. We will do as you request, but we are extremely anxious to clean up the old contract.

16 June 24, 1899.

* * * We would like to know how soon you expect us to put in the balance of the hay due upon the contract, as we are anxious to get it all cleaned up.

The claimant made deliveries of hay substantially to the amounts called for in said telegrams, and the same were accepted by the depot quartermaster at Chickamauga Park as follows:

	Pounds.
Between September 12 and September 30, thirty-seven (37) cars, containing	711,710
Between October 5 and November 1, seventeen (17) cars, containing	402,225
Between November 1 and November 28, thirteen (13) cars, containing	333,820
In December, none forwarded.	
January 20, 1899, three (3) cars, containing	67,800
Between February 3 and February 22, 1899, twenty-eight (28) cars, containing	670,505
Between March 22 and March 30, 1899, seventeen (17) cars, containing	407,680

Between April 5 and April 29, 1899, fifteen (15) cars, containing	359,980
Between May 1 and May 31, 1899, twenty-eight (28) cars, containing	700,290
Between June 1 and June 13, 1899, seven (7) cars, containing	160,480
Total	3,814,490
Making together with the	4,685,949
Pounds delivered prior to August 28	8,500,439

Owing to the manner in which the orders were given and the season of the year, the claimant was unable to buy at points near the places of production, as it had done during the summer of 1898, and ship thence to Chickamauga Park, Georgia, but had to purchase the hay on the St. Louis market at the current market price
17 in that city, and ship the same from St. Louis to Chickamauga Park, Georgia, and also had to pay the full rate of transportation between these points, twenty-nine (29) cents a hundredweight, besides charges for rehandling and switching. Hay is an article varying greatly in price at different seasons of the year, and gets much higher as the autumn and winter go on, and reaches its maximum about the close of the spring months.

Between the 28th of August, 1898, when shipments were stopped by the telegram hereinbefore quoted, and the month of June, 1899, when the last of the hay was delivered, hay rose in price, from $7.50 a ton to $11.50 a ton, delivered free on board the track at St. Louis. In this way the hay delivered after the 12th of September, 1898, cost the claimant an amount considerably in excess of what it would have cost them in the summer, and in excess of the price of 61½ cents a hundredweight,—the rate at which they have been paid for the same.

Payments were always held back from the claimant by the quartermaster and an amount due to claimant was always in the hands of the quartermaster as security to compel it to deliver as required.

The claimant before proceeding to deliver hay pursuant to the telegrams from the depot quartermaster hereinbefore set forth, beginning on the 12th of September, 1898, informed him that increased cost would be thrown upon the claimant if compelled to deliver, and requested to be relieved from so doing; but the depot quartermaster refused to release the claimant from the obligation of delivery. The claimant while objecting did not notify the depot quartermaster that it would demand damages for the losses sustained, or would seek to recover a higher price for hay to be delivered than that expressed in its proposals to deliver hay set forth in finding I. Full payment was made by the defendants according to the terms of the aforesaid agreement and was accepted by the claimant without protest or reservation at the time when the vouchers were given or the payments made.

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V.

The cost to the claimant of the hay delivered after the 12th September, 1898, exceeded the price it received for the same by $7,869.

The cost of the 4,685,949 pounds of hay delivered by the claimant under the agreement aforesaid prior to September 12, 1898, including the cost of transportation of the same, was $27,211.53. The difference between this cost and the amount received by the claimant for said hay is $1,607.37. The last payment was received by the claimant from the United States, July 24, 1899.

VI.

The claim was submitted to the quartermaster general, under date of May 11, 1899, as follows:

St. Louis Hay and Grain Co.

ST. LOUIS, MO., *May* 11, 1899.

Capt. D. E. McCarthy, depot quartermaster, Battlefield Sta., Ga.

DEAR SIR: We beg to enclose you our claim against Government for $4,600.00 covering loss we sustained in filling our contract at Chickamauga Nat. Park on hay, on account of Government not taking hay according to their proposal of one-sixtieth per day, and all papers pertaining to our contract *is* attached. We desire to say the writer had a personal interview with Col. C. P. Miller at Washington, D. C., of the quartermaster general's department, and he advised us to file our claim through you to them with all necessary papers giving evidence of the justness of our claim. We believe everything is attached properly, as required. We have acted in good faith with you in filling this contract against our verbal protest through the writer to you that we were losing money and that Government should not require us to complete contract. But you so advised us you would go into open market and buy for our account and charge us difference, and we attach your telegram and letter so con-

19 firming. It bears consideration that when we are compelled to complete our contract with Government under prolonged term of contract for their option, and in direct violation of their proposal, agreement, and estimate at time contract was awarded us, that we are entitled to recourse and to be reimbursed.

With full knowledge you have on this entire contract, we trust that you can see your way clear to treat us justly and recommend our claim.

Yours, very truly,

ST. LOUIS HAY AND GRAIN CO.
FRED DEIBEL, *Pres.*

And the depot quartermaster reported thereon, under date of June 28, 1899, as follows:

"It would seem but just that this firm's claim should be approved, after it has been clearly shown that the amount of their claim is based on an increased cost of hay to them."

And again, at a later date, as follows:

"Undoubtedly deliveries were made for a longer period than contemplated when bids were made by contractors.

"At that time there were about 12,000 animals at the camp at Chickamauga Park, but in August and September the camp was practically broken up.

"The contractors continued to supply us with hay until July, '99, and in the meantime, especially during the winter months, hay had advanced in price, so that it seemed but just that some recompensation should be made to the contractors."

The claim, however, was not allowed on the ground that it was one for unliquidated damages, of which the accounting officers have no jurisdiction.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover and the petition should be dismissed.

BY THE COURT.

20 IV.—*Opinion of the Court.*

NOTT, Ch. J., delivered the opinion of the court.

The ultimate facts of the case are these:

1. The officers of the quartermaster's department entered into an agreement with the claimant for the sale and delivery of hay. "The estimated quantity" was 9,000,000 pounds. The quantity might "be increased or decreased at the option of the United States, not exceeding 20 per centum thereof." Should "the troops be wholly or in part withdrawn" from the camp at Chickamauga Park, "the award"—that is to say, the agreement—was to "become inoperative to the extent of such reduction." Deliveries were to begin within five days "and proceed at daily rates of at least one-sixtieth of amount, or in such quantities and at such times afterwards as may be designated by the chief quartermaster or his authorized representative." In case of failure "to furnish and deliver the supplies" the contractor was to "be charged with all expense resulting from such failure."

2. Under and in pursuance of this agreement the officers of the quartermaster's department called for and the claimant delivered 4,685,949 pounds of hay between the 12th of July and the 28th of August, 1898; that is to say, within the first forty-seven days after the agreement went into effect. The depot quartermaster—*i. e.*, the officer charged with the business at the camp—then stopped further deliveries; the claimant, by its officers, remonstrated against this. Fifteen days later, on the 12th of September, the quartermaster in charge resumed issuing orders for the delivery of hay, but in relatively small quantities; and these orders continued until June, 1899, so that between September 12, 1898, and June 13, 1899, the claimant was required to deliver and did deliver 3,814,490 pounds. The claimant remonstrated against being compelled so to deliver,

and represented that the price of hay had seriously risen, and that the change of delivery from summer and autumn to winter and spring greatly increased the freight charges upon the hay, which were to be borne by the claimant. Nevertheless the officer in charge compelled the claimant to deliver when called upon. This compulsion consisted in withholding money due for hay and threatening to purchase in the open market at the cost of the contractor. The suspension of orders for the delivery of hay and the diminished and protracted orders for delivery given by the depot quartermaster in charge were consequent to the removal of troops from the camp at Chickamauga Park and the decreased number of animals there requiring forage.

3. The agreement before referred to consisted of the advertisement of the chief quartermaster of Camp George H. Thomas, at Chickamauga Park, where the hay was to be delivered, of the proposals of the contractor and the acceptance of the proposals by the chief quartermaster. Beyond this the agreement was never reduced to writing and signed by the contracting parties, as prescribed by Revised Statutes, section 3744.

4. The claimant remonstrated against the suspension of deliveries in August, 1898, and against being compelled to deliver, as before set forth, after the price of hay had risen and the purchase of hay could not be made in the country, but had to be made in St. Louis, throwing upon it additional cost and increased freight charges, but did not treat the contract as rescinded or refuse to deliver. Payments for all deliveries were made by the officers of the quartermaster's department upon the usual vouchers as for hay delivered under the agreement, and the claimant receipted therefor without protest or reservation made at the time of payment. The losses suffered by the claimant upon hay delivered after the 12th of September, 1898, exceeded the price it received by $7,869.

21 As to the agreement, which is relied upon by the claimant, its intent and meaning do not seem as clear to the court as to the claimant's counsel. Deliveries were to begin within five days, and "proceed at daily rates of at least one-sixtieth of the amount, or in such quantities and at such times afterwards as may be designated by the chief quartermaster or his authorized representative." The provision that deliveries were "to begin within five days from date of award and proceed at daily rates of at least one-sixtieth of the total amount," standing by itself, would cast a reciprocal obligation upon the defendants to receive one-sixtieth daily if tendered, under the decision of the Supreme Court in *Speed's case* (8 Wall., 77). But this clause is qualified immediately by the words "in such quantities and at such times as may be designated by the chief quartermaster or his authorized representative." Furthermore, the agreement previously provides that "if the troops shall be wholly or in part withdrawn the award shall become inoperative to the extent of such reduction." The troops were withdrawn. Did the agreement become "inoperative to the extent of such reduction," *i. e.*, was the total quantity of 9,000,000 pounds of hay to be reduced in proportion to the diminishing number of ani-

mals remaining in the camp, and were the deliveries to be daily until the reduced total of the hay was delivered, or had the quartermaster the right to hold the claimant for the full amount of 9,000,000 pounds and stretch the period for deliveries over many months? In a word, did the claimant agree to deliver as much hay as might be required within a reasonable time, or bind itself to furnish 9,000,000 pounds of hay at Chickamauga Park as slowly or as rapidly as the military exigencies there might require and take the chances of its contract extending over the whole period of the war?

As to the agreement itself the court is constrained to hold, under the leading case of *Clark v. United States* (95 U. S. R., 539), and many decisions since, that the transaction between the parties was not a purchase in open market under the pressure of a military exigency, and that the agreement not being in writing and signed by the parties, as required by the Revised Statutes, section 3744, was not a valid contract upon which an action can be brought for damages caused by the defendants' breach.

As to the right of the claimant to recover, irrespective of the express contract, what the hay was actually worth at the time and place of delivery, the court is again constrained to hold that the claimant cannot recover. It is true that, under the authority cited, a party whose contract is for this statutory reason invalid and void may recover *in quantum meruit*; and it is true that, where there is an express valid contract, payment by a debtor of a part of his debt is not satisfaction of the whole, even though a receipt in full be given. (*United States v. Bostwick*, 94 U. S. R., 53.) But nevertheless it has been uniformly held by this court since *Kirkham & Brown* (4 C. Cls. R., 223) that in cases of implied contract where the recovery will be *in quantum meruit* and the price to be paid is undetermined by agreement, where the defendant has paid and the contractor has accepted a price as payment in full, it closes the transaction, and the contractor cannot come in and be allowed to allege that his goods were worth more than the price which he consented to take for them. (*Comstock's case*, 9 C. Cls. R., 141.) Acceptance of a smaller sum than the one claimed does not leave the defendants open to further claim, if the acceptance of the smaller sum was voluntary, without intimidation, and with full knowledge of all the circumstances. (*Savage v. United States*, 92 U. S. R., 382.)

The counsel for the claimant has warmly pressed upon the court the fact that the failure to reduce the contract to writing, as required by the statute, was the failure and default of the officers of the Government; that the claimant did everything in its power to make a complete and valid agreement, and that the defense which would preclude a party from recovering damages under the contract if it was valid, or *in quantum meruit* if it was valid, is grossly inequitable.

It must be acknowledged that this case belongs to that class which has been termed by many courts "hard cases," and that the hardness of it was caused by officers of the Government neglecting their statutory duty (Revised Statutes, sec. 3746), and that the claimant being

ignorant of the law might well rely upon the officers of the Government to reduce the contract to a legal form.

The court is aware that citizens of the United States transact their business generally under State laws, and are not familiar with acts of Congrss, and might well rely in such matters upon the knowledge and good faith of the officers of the Government. But these facts cannot validate that which is declared by statute to be invalid. Ignorance of law does not change the law.

The judgment of the court is that the petition be dismissed.

22

V.—*Judgment of the Court.*

ST. LOUIS HAY AND GRAIN COMPANY
v.
UNITED STATES. } No. 22453.

At a Court of Claims held in the city of Washington on the 17th day of February, 1902, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, The St. Louis Hay and Grain Company, be dismissed.

BY THE COURT.

23

VI.—*Application for and Allowance of Appeal.*

ST. LOUIS HAY AND GRAIN COMPANY
vs.
UNITED STATES. } No. 22453.

Now comes the claimant, The St. Louis Hay and Grain Company, and appeals to the Supreme Court of the United States from the judgment of this court, entered on the 17th day of February, 1902, dismissing its petition, and moves for an allowance of this appeal.

GEORGE A. AND WILLIAM B. KING,
Attorneys for Claimant.

Filed April 7, 1902.

Ordered, that this appeal be allowed as prayed for.

April 7, 1902. BY THE COURT.

24

Court of Claims.

THE ST. LOUIS HAY AND GRAIN COMPANY
vs.
THE UNITED STATES. } No. 22453.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law filed by the court, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims.

In testimony whereof, I hereunto set my hand and affix the seal of said Court of Claims, this 14th day of April, 1902.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: File No. 18,497. Court of Claims. Term No. 644. St. Louis Hay and Grain Company, appellant, *vs.* The United States. Filed April 14th, 1902.